United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

OK SOON KEY,

Plaintiff,

v.

BRINN LUJAN,

Defendant.

Case No. 17-cv-00854-LB

ORDER DISMISSING CASE

Re: ECF No. 31

INTRODUCTION

The plaintiff Ok Soon Key sued an officer of the San Francisco Police Department; liberally construed, her complaint alleges that the officer used excessive force against her daughter in violation of the Fourth Amendment and her Fourteenth Amendment due-process right to associate with her daughter.[1] The defendant moves to dismiss because Ms. Key cannot assert her daughter's Fourth Amendment rights and does not plausibly plead a Fourteenth Amendment claim.[2] The court can decide the motion under Civil Local Rule 7-1(b) and grants the motion to dismiss the Fourth Amendment claim with prejudice and the Fourteenth Amendment claim with leave to

[1] Am. Compl. – ECF No. 11. Record citations refer to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of documents.

[2] Motion – ECF No. 31.

amend.

STATEMENT

The complaint has the following fact allegations about the police officer's use of force against Ms. Key's daughter. Ms. Key and her daughter had an argument on February 24, 2015, and Ms. Key called the police.[3] The police grabbed the daughter and tried to handcuff her, twisting her body.[4] It looked like the police officer used his leg, slammed her on the ground, and smashed her face on the carpet; the daughter couldn't move.[5] He might have fallen down hard on one of his legs, and it "[l]ooked like he was very mad when he slammed her on the ground and smashed her face on the carpet. She couldn't move."[6] The daughter didn't do anything wrong, there was no reason to hit her or smash her face on the carpet and handcuff her; it didn't match the situation at hand.[7] Her face was scratched up.[8] Her hip was broken so badly that she could not have surgery at CPMC and had to have surgery at UCSF; two years later, she is still in pain and it is unnecessarily hard for her to walk.[9] Her body is not like it was before, her face has had a scar for two years, she can barely walk, and she feels threatened, doesn't want to answer the phone, and is in emotional distress.[10] Ms. Key is in pain for her daughter.[11]

The complaint also says that Ms. Key went with her daughter to the hospital that day and was present during her daughter's treatment.[12]

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[3] *Id.* at 5.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.* at 6.
[10] *Id.*
[11] *Id.* at 7.
[12] *Id.* at 11.

GOVERNING LAW

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief" to give the defendant "fair notice" of what the claims are and the grounds upon which they rest. *See* Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). This statement "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a mere possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). A complaint does not need detailed factual allegations, but "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a claim for relief above the speculative level . . . ." *Twombly*, 550 U.S. at 555 (internal citations omitted). Also, "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557).

While a court construes *pro se* pleadings more "leniently," the court cannot salvage claims that are fatally deficient. *See De la Vega v. Bureau of Diplomatic Sec.*, No. 07-CV-3619-WHA, 2007 WL 2900496, at *1 (N.D. Cal. Oct. 1, 2007). If a court dismisses a complaint, it should give leave to amend unless the "the pleading could not possibly be cured by the allegation of other facts." *Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990).

ANALYSIS

Ms. Key cannot assert a violation of her daughter's Fourth Amendment Rights. *Alderman v. United States*, 394 U.S. 165, 174 (1969); *Moreland v. Las Vegas Met. Police Dep't*, 159 F.3d 365, 369 (9th Cir. 2001). The court dismisses the claim with prejudice.

The next issue is whether Ms. Key states a Fourteenth Amendment claim. The Fourteenth Amendment's substantive-due-process clause protects against the arbitrary or oppressive exercise of government power. *See County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998). Parents and children may assert Fourteenth Amendment substantive-due-process claims if they are deprived of their liberty interest in the companionship and society of their child or parent through official conduct. *See Lemire v. Cal. Dept. of Corrections & Rehabilitation*, 726 F.3d 1062,1075 (9th Cir. 2013) (parents and children); *Smith v. City of Fontana*, 818 F.2d 1411, 1418–19 (9th Cir. 1987)[13]; *Curnow v. Ridgecrest Police*, 952 F.2d 321, 325 (9th Cir. 1991) (parent); *Crumpton v. Gates*, 947 F.2d 1418, 1421–24 (9th Cir. 1991) (child); *cf. Ward v. City of San Jose*, 967 F.2d 280, 283–84 (9th Cir. 1992) (sibling has no constitutionally protected interest in brother's companionship under section 1983). "[T]he Due Process Clause is violated by executive action only when it can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense." *Lewis*, 523 U.S. at 845–47 (quotation omitted); *see Lemire*, 726 F.3d at 1075. The cognizable level of executive abuse of power is that which "shocks the conscience" or "violates the decencies of civilized conduct." *Lewis*, 523 U.S. at 846. Mere negligence or liability grounded in tort does not meet the standard for a substantive-due-process decision. *Id.* at 848–49.

The Ninth Circuit has explained: "In determining whether excessive force shocks the conscience, the court must first ask 'whether the circumstances are such that actual deliberation [by the officer] is practical.'" *Wilkinson*, 610 F.3d at 553 (quoting *Porter v. Osborn*, 546 F.3d 1131, 1137 (9th Cir. 2008) (quoting in turn *Moreland v. Las Vegas Metro. Police Dep't*, 159 F.3d 365, 372 (9th Cir. 1998) (internal quotation omitted)). "Where actual deliberation is practical, then an officer's 'deliberate indifference' may suffice to shock the conscience. On the other hand, where a law enforcement officer makes a snap judgment because of an escalating situation, his conduct may be found to shock the conscience only if he acts with a purpose to harm unrelated to legitimate law enforcement objectives." *Hayes v. County of San Diego*, 736 F.3d 1223, 1230 (9th

[13] *Smith* was overruled on other grounds by *Hodgers–Durgin v.De la Vina*, 199 F.3d 1037, 1040 n. 1(9th Cir. 1999).

Cir. 2013) (citing *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010)).

Here, Ms. Key has not plausibly pleaded conduct that shocks the conscience or that the officer's conduct interfered with her familial relationship with her daughter. The court does not think that she can amend her complaint to state a claim. But given the Ninth Circuit's standards for liberally construing *pro se* complaints and dismissals with leave to amend, the court dismisses the claim with leave to amend.

CONCLUSION

The court dismisses the Fourth Amendment claim with prejudice and the Fourteenth Amendment claim with leave to amend. The plaintiff must file any amended complaint by August 14, 2017. This disposes of ECF No. 31.

IT IS SO ORDERED.

Dated: July 24, 2017

LAUREL BEELER
United States Magistrate Judge

United States District Court
Northern District of California